IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.1418 of 1986**
DATE OF DECISION: March 2, 2007

GRAM PANCHAYAT BARTANA, TEHSIL RAJPURA THROUGH ITS ADMINISTRATOR SHRI RANJIT SINGH ...PETITIONER

VERSUS

DIRECTOR, CONSOLIDATION OF HOLDINGS, PUNJAB (SH. K.S. MINHAS) SECTOR 22-C, CHANDIGARH AND OTHERS. ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR.R.S. HUNDAL, ADVOCATE FOR THE PETITIONER.
MR. BALBIR SINGH, ADVOCATE
MR. C.M. SHARMA, ADVOCATE
MR. ARUN JAIN, ADVOCATE FOR THE RESPONDENTS.
MR. SANJIV KAUSHIK, ADVOCATE FOR RESPONDENTS NOS.91 & 92
MR. PAWAN KUMAR BANSAL, ADVOCATE

ASHUTOSH MOHUNTA, J.

This judgement shall dispose of CWP No.1418 of 1986, CWP No.2248 of 1986, as common questions of law and facts arise in these petitions. However, the facts have been extracted from CWP No.1418 of 1986.

The petitioner has prayed for quashing the impugned orders dated 9.5.1985, passed by respondent No.1 (Annexure P-2) and the order dated 7.12..1985 (Annexure P-3), passed by respondent No.2.

Briefly, the facts of the case are that as per Jamabandi for the year 1946-47, the land in question belongs to 3 Pattis, namely, Patti Saut (15½ plough i.e., shares), Patti Nihal (15½ plough i.e. Shares) and Patti Nathi (18 plough i.e. Shares) in the cultivation column entry reads as “Self-Cultivation”. The total area of these three Pattis was stated to be 1489

bighas 14 biswas. The Consolidation Authorities vide Mutation No.311 dated 12.6.1957, unilaterally, changed the entry in the name of the Gram Panchayat.

The respondents Sant Ram and others filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Fragmentation) Act, 1948 (hereinafter referred to as 'Consolidation Act) before the Director, Consolidation of Holdings, Punjab wherein, it was averred that the land in dispute belongs to the three Pattis, namely, Saun, Nihal and Nathi and this was liable to be distributed amongst the aforementioned three Pattis as per their shares. It was further averred that the Consolidation Authorities vide Mutation No.311 dated 12.6.1957, without any specific order, consolidation scheme or any other legal document has unilaterally changed the entry from the name of three Pattis to the name of Gram Panchayat and that this action of the Consolidation Authority was without jurisdiction and without any authority of law.

The Director, Consolidation of Holdings vide order dated 9.5.1985 (Annexure P-2), found that prior to the initiation of consolidation proceedings, the entire area was in the possession of *Makbooza Malkaan* and that the consolidation authorities had no jurisdiction to change the title of the land and record it in the name of the Gram Panchayat. Accordingly, respondent No.1 after deducting the land measuring 63 bighas 7 biswas which was used for religious purposes, cremation ground, playground, charagah, grazing ground, pond, road and path ordered that 1373 bighas 7 biswas be distributed according to the shares mentioned in the Khatauni Istemal Khewat No.68 in favour of three Pattis. It was also held that the changes made vide mutation No.311 dated 12.6.1957, shall be ignored. He

accordingly, remanded the case to the Consolidation Officer with direction that he should work out the share of the individual right holders and accordingly distribute the area amongst them as per their shares based on Hasab Rasad Rakba Khewat. The Consolidation Officer vide order (Annexure P-3) distributed the land amongst the right holders in terms of the order Annexure P-2.

Mr. Hundal, counsel for the petitioner, in the first instance, has argued that the proceedings under Section 42 of the Consolidation Act have been carried out at the back of the Gram Panchayat and without any notice to them. It is contended that the Gram Panchayat was a necessary party to be heard before any order could be passed by the authority concerned under Section 42 of the Consolidation Act. Learned counsel contends that he impugned order, thus, is liable to be set aside on the ground that no opportunity of hearing was given to the petitioner-Gram Panchayat.

Learned counsel has further contended that the Director, Consolidation of Holding has no jurisdiction to decide the question of title which can only be decided by the Collector under Section 11 of the Punjab Village Common Lands (Regulation) Act 1961 (for short 'the Act'). It has been averred that the suit land was recorded as 'Shamlat Deh' prior to the consolidation and it was only for convenience of management that the land was divided into Pattis.

It has next been contended that even if the land was recorded as 'Shamlat Patti' prior to the consolidation, still the Director, Consolidation of Holdings, has no jurisdiction to order the distribution of land in favour of three Pattis. Learned counsel has relied on the judgement in *Gram Panchayat Nurpur* vs. *State of Punjab and others*, reported as 1997(1) PLJ

269 wherein it has been held that the Additional Director, Consolidation has no authority to go into the question whether the land in dispute is shamlat deh or not. It was further held that this question can only be decided under the provisions of the Act. Learned counsel has also relied on the judgement in *Gram Panchayat Sidh* vs. *Additional Director, Consolidation of Holdings and others*, reported as 1997 PLJ 313 wherein it has been held that the question of ownership can only be decided by the Collector under Section 11 of the Act.

It has also been contended by the learned counsel that although the consolidation had taken place in the year 1957 but the petition under Section 42 was filed by the respondents in the year 1985 i.e., after more than 27 years and hence, the impugned orders are liable to be quashed. Mr. Hundal has also contended that as the suit land was shamlat deh, therefore, it stood vested in the Gram Panchayat.

Mr. Arun Jain, learned counsel for the respondents, while replying to the arguments raised by the counsel for the petitioner has argued that the Gram Panchayat was duly served through the Sarpach as is clear from the perusal of Annexures R1 and R2 filed with the written statement in CWP No.2248 of 1986. Learned counsel contends that a perusal of Annexure R/1 would show that the notices were duly served on the petitioners and the report of service having been effected has been recorded on 26.3.1985, on the back of the notice Annexure R-1. He further submits that a perusal of Annexure R-2 shows the presence of Sarpanch and other Panches during the course of hearing before the Director, Consolidation of Holdings.

In response to the argument that the Director, Consolidation of

Holdings has no jurisdiction to decide the question of title it has been argued that Director, Consolidation of Holdings has not decided any question of title vide the impugned order. It is contended by the learned counsel that the Director, Consolidation has only corrected a mistake committed by the consolidation authorities in ordering mutation No.311 dated 12.6.1957 without any basis. Learned counsel has argued that the consolidation authorities can always correct a mistake under the provisions of Section 43-A(1) of the Consolidation Act

Replying to the arguments of the counsel for the petitioner that the application under Section 42 of the Consolidation Act was filed after an inordinate delay, it has been argued by Mr. Jain that this Court has held in a number of cases that in the matter of correction or rectifying a mistake there is no limitation provided. Learned counsel contends that abunch of similar writ petitions was decided by this Court. Even the Letters Patent Appeal and Special Leave Petition challenging the aforesaid judgement were also dismissed. The learned counsel relied upon a judgement reported in *Gram Panchayat Gunia Majri* vs. *Director, Consolidation of Holdings and others*, reported as 1991 PLJ 46 and also a Division Bench judgement in *Mohinder Singh* vs. *State of Punjab and others* reported as 2006 HRR 694.

Mr. Arun Jain, has lastly contended that under Section 2(g) of the Act of 1961, the land described in the revenue record as Pattis, Panas and Tholas and not used, according to the revenue record for the benefit of village community or a part thereof or for common purposes of the village stands excluded from the definition of shamlat deh. Section 2(g) of the Act reads as under:-

"Section 2(g) - "shamlat deh" includes

xxxxx

bud does not include land which -

xxxxx

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village."

On the basis of the above, it is contended that as the land in the present case was recorded in the name of three Pattis, hence the same could not be said to be shamlat deh as per Section 2(g) of the Act.

It was then contended by the learned counsel for the petitioner that the land in question was recorded as Shamlat Deh prior to consolidation and it was for the convenience and management that the land was divided into pattis. On the other hand, learned counsel for the respondents has argued that the land described in the revenue record as Pattis, Pannas, Tholas and not used, according to the revenue record, for the benefit of village community or a part thereof or for the common purposes of village, have specifically been excluded from the definition of shamlat deh under Section 2(g)(v) of the Act.

The learned counsel for the respondents further argued that in the case of number of proprietors similarly circumstanced, there has been civil litigation as well as the proceedings before the Collector wherein such proprietors were declared owners in possession and on the basis of such decision, entries in the revenue record clearly reflected showing such proprietors to be owners in possession.

The learned counsel for the respondents also contends that the authorities relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case as the land in dispute did not belong to the Gram Panchayat either before or after the consolidation of holdings but belongs to the three Pattis namely; Patti Saut (15½ ploughs i.e., his share), Patti Nihal (15½ ploughs i.e. his share) and Patti Nathi (18 ploughs i.e., his share) as is clear from the Jamabandi for the year 1946-47.

I have heard learned counsel for the parties and with their assistance have gone through the record. The first contention of the learned counsel for the petitioner that the proceedings under Section 42 of the Act of 1948 have been carried out without hearing and at the back of the petitioner Gram Panchayat has no merit and the same is untenable in view of the fact that the Gram Panchayat was duly served through the Sarpanch. The notice issued to the parties concerned on 19th March 1985 for appearance on 29th March 1985 is available at Annexure R-1 with the written statement filed on behalf of the contesting respondents in Civil Writ Petition No.2248 of 1986. Still further on 29.3.1985, the Director, Consolidation of Holdings recorded that the judgement had been reserved after hearing the parties at length which included Bhagwant Singh, Sarpanch and Budh Singh, Panch of the Gram Panchayat. This order is also available at Annexure R-2 of the written statement filed in Civil Writ Petition No.2248 of 1986. In view of the aforesaid factual position which has not been controverted the first contention raised by the counsel for the petitioner that the impugned order dated 19.5.1985 (Annexure P-2), was passed without notice and hearing the Gram Panchayat fails.

It was then contended by the counsel for the petitioner-Gram

Panchayat that the Director, Consolidation of Holdings has no jurisdiction to decide the question of title which could only be decided by the Collector under Section 11 of the Act. The learned counsel for the respondents, however, submitted that the Director, Consolidation of Holdings vide order Annexure P-2 has not decided any question of title. In fact, the Director, Consolidation of Holdings has only corrected a mistake committed by the Consolidation Authority while ordering Mutation No.311 dated 12.6.1957. The learned counsel for the respondents further argued that the consolidation authorities can always correct a mistake under Section 43-A of the Act of 1948 and that the consolidation authorities have no jurisdiction to change the entry with regard to title of its own and it being a mistake, it could be corrected by the authorities under the Act of 1948. The learned counsel further submitted that neither there was any order nor any legal document available justifying entry of mutation No.311 dated 12.6.1957 by the Consolidation authorities and also the land in question was not reserved for common purposes in the consolidation scheme. Since it was an act of omission and commission on the part of the consolidation authorities it was liable to be set right and necessary correction required to be made in the revenue record. The Director, Consolidation of Holdings vide the impugned order, Annexure P-2 has not proceeded to decide any question of title as sought to be made out by the learned counsel for the petitioner-Gram Panchayat as the authority only corrected a mistake occurred while recording mutation without there being any basis. The counsel for the respondents also drew support from the judgement of this Court in *Mohinder Singh* vs. *Commissioner, Ferozepur Division, Ferozepur*, reported as 1992 PLJ 711 as under:-

> *"2. In para 10 of the petition, the petitioner has drawn the attention of the court to letter dated September 22, 1961 which is said to have been taken into account while sanctioning the mutation in favour of the Gram Panchayat. The argument raised by the learned counsel for the petitioner is that the said letter could not have formed the basis for making a change in the revenue record and the change, if any, should have been made on the basis of some independent evidence. The aforesaid averments made by the learned counsel for the petitioner in para 10 of the petition have not been denied in a specific manner by the respondent - Gram Panchayat in its reply. For this reason, I am of the view that Annexure P-3 itself, is not sustainable."*

The aforesaid contention of the learned counsel for the petitioner also is liable to be rejected as perusal of the order, Annexure P-2, shows that the Director, Consolidation of Holdings has no where decided the question of title. He has only proceeded to hold that the consolidation authorities had no jurisdiction to enter the mutation No.311 dated 12.6.1957, as neither there was any order nor any legal document justifying entry of such a mutation. He has further held that it is an act of omission and commission on the part of the consolidation authorities and was liable to be set right and necessary correction carried out in the record. The Director, Consolidation of Holdings, after excluding the land of religious places, cremation ground, play grounds, charagarh, grazing ground, pond, roads and paths i.e., for common purposes, has held that since the land in

question, prior to consolidation, belonged to Pattis and was under cultivating possession of Makbuja Malkan was liable to be distributed amongst the Pattidars as per their share. The judgements relied upon by the learned counsel for the petitioner in *Gram Panchyat Nurpur's case* (supra) and *Gram Panchayat Sidh's case* (supra) have no applicability in the fact and circumstances of the instant case as the Director, Consolidation of Holdings, has only corrected a mistake committed by the consolidation authorities and he did not proceed himself to decide any question of title. The decision relied upon by the counsel for the petitioner, thus, are distinguishable.

A perusal of the Jamabandi for the year 1946-47 shows that the land in question has been described as shamlat deh divided into 40 ploughs, Patti Saun 15½ ploughs, Patti Nihal 15½ ploughs and Patti Nathi 18 ploughs and in the column of cultivation the entry is self cultivation.

Such lands have been specifically excluded from the definitioin of shamlat deh as defined under Section 2(g)(v) of the Act. Since the land in question has not been shown to have been owned by the Gram Panchayat before consolidatioin nor it has been shown to have been vested in the Gram Panchayat by operation of any law, therefore, the consolidation authorities by entering mutation No.311 on 12.6.1957 could not decide the title of their own. Since neither any basis justifying the change in the entry as it existed prior to consoidation has been shown to exist nor the land in question has been shown to have been reserved for common purposes in the consolidation scheme, the change effected by the consolidation authorities, therefore, was an act of omission and commission and the same has rightly been ordered to be corrected by the Director, Consolidation of Holdings. A

mistake committed by the consolidation authority could only be corrected by the authorities under that Act.

The counsel for the petitioner then contended that although consolidation has taken place in the year 1957 but the petition under Section 42 of the Consolidation Act was filed by the contesting respondents in the year 1985 i.e., after more than 27 years. In reply the learned counsel for the respondents argued that for making correction of a mistake there is no limitation provided. I have thoroughly considered the aforesaid contentions of the learned counsel for the parties and I am of the view that for correcting a mistake there is no limitation provided. Even this Court in *Gram Panchayat, Gunia Majri's case* (supra) has taken the view that a mistake crept up during consolidation can be rectified at any time and may be even after a lapse of quarter of century where it was held as under:-

> *"5. Before parting, it may be noticed, to be fair to the petitioners that the course of action adopted by the Consolidation officers was also sought to be challenged on the ground that the original proprietors from whom land was taken during consolidation have approved the consolidation authorities after a considerably long period and that too direct under Section 42 of the said Act of 1948. I am not impressed by the agreement as substantial justice has been done between the parties and if a mistake crept in during consolidation, that is, by either reserving the land more than what was required or by not immediately re-distributing it back after the consolidation proceedings were over, the same may be done*

now even after a lapse of quarter of a century or so. The action does not become in any way illegal or contrary to the statute. Rather the consolidation authorities are to be encouraged for their arriving at the decision correctly, though at a belated stage."

Similarly, a Division Bench of this Hon'ble Court in *Gram Panchayat Hirdapur* vs. *Director Consolidation of Holdings and others*, reported as 2006(1) HRR 694 has categorically held as under:-

"2. Mr. Gurcharan Singh, Advocate the learned counsel for the petitioner has argued that in view of the judgement of the Hon'ble Supreme Court in Gram Panchayat Kalran vs. Addl. Director of Consolidation and another, JT 1997(8) S.C. 430, the petitioner under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 was not maintainable after a long period since finalization of the consolidation proceedings. We have considered this submission of the learned counsel and find that it lacks merit. The Hon'ble Supreme Court was not dealing with the reversion of Bachat land to the share holders in the aforesaid cited case. It is not disputed by the Gram Panchayat that the land in question is Bachat Land. The question of limitation is, therefore, not relevant in the facts of the case. Faced with this situation, Mr. Gurcharan Singh, has argued that once the consolidation proceedings had been finalized the Director, Consolidation was precluded from interfering in the matter as

the matter had to be determined by the Collector under the Punjab Village Common Lands (Regulation) Act, 1961 in view of the judgement of the Hon'ble Supreme Court in Gram Panchayat Nurpur vs. State of Punjab and others 1997(1) PLJ 268 = 1997 HRR 366 S.C., this argument is equally without any merit. Admittedly, there is no dispute that the land in question belongs to the proprietors of the village who have been given their shares pro-rata. We find no merit in the writ petition. Consequently the writ petition is dismissed."

That since the land in question was owned by the Pattis and Mutation No.311 was without any authority of law, which continued to be owned by the Pattis and required to be redistributed being Bachat land. It has been held by a Division Bench of this Hon'ble Court in the case of *Gurjant Singh* vs. *Commissioner*, reported as 2000(2) RCR (Civil) 437 held as under:-

"16. In view of the consistent view taken by the Hon'ble Supreme Court and thus Court from time to time, it is not possible to hold in tune with the findings recorded by the learned Single Judge and, therefore, it has to be held that the Bachat land i.e. land which remains unutilized after utilizing the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat. Inasmuch as there is no material brought on records of the case showing how a mutation came

to be entered in favour of Gram Panchayat with regard to land which was consistently shown in the records of rights as belonging to proprietors, the mutation entry in favour of Gram Panchayat has to be completely ignored. It may be mentioned that this view was also taken by the same Hon'ble Judge in a D.B. Who decided the writ petitions giving rise to the present Letters Patent Appeals. It is quite apparent that the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and the judgements that have been cited before us were not brought to the notice of the learned Single Judge. The judgement in appeal recorded by the learned Single Judge in Civil Writ Petitions No.18016, 18018 and 18049 of 1991 cannot, thus, sustain.

17. Before we may part with this order, we would like to mention that several cases of this nature are being filed almost every day as is also informed to us by the learned counsel representing the parties. It appears to us that Gram Panchayat even though conscious of the fact that such lands cannot possibly belong to it rakes up the issue primarily for the reason that some individuals have occupied the Bachat land. The present case also provides such an example. It has been repeatedly held by this Court and reference whereof has already been made above that the un-utilised land after utilizing the land earmarked for the common purposes has to be redistributed amongst the proprietors according to the

share in which they had contributed the land belonging to them for common purposes. This exercise, it appears, has not been done throughout the States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh even though there is a specific provision for doing that. We have already reproduced the relevant sections of the Act which in turn do contain the provision of re-partition. This non-exercise of statutory provision has led to widespread litigation both in States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh. With a view to curb this unnecessary and avoidable litigation as also keeping in view the common good and benefit of proprietors who had contributed land belonging to them for common purposes, we no only direct in this case that the concerned authorities under the Act should redistribute the bachat land amongst the proprietors according to their shares but this exercise must be done throughout the States of Punjab and Haryana and villages forming part of Union Territory Chandigarh. A copy of this order, thus, be sent to the Chief Secretaries of Punjab and Haryana, Civil Secretariat, Chandigarh and Advisor to the Administrator, Union Territory, Chandigarh with a direction that authorities under the Statute to redistribute/re-partition bachat land amongst the proprietors according to their shares. This exercise be done as expeditiously as possible and preferably within six months for re-partition must commence. Liberty to apply in the event of non-compliance of directions,

referred to above.

Resultantly, the present appeals are allowed. Parties are, however, left to bear their own costs."

In view of the above, it is held that the Consolidation Authorities had no jurisdiction to enter mutation No.311 on 12.6.1957, in the name of Gram Panchayat and the order Annexures P-2 & P-3 suffers from no infirmity and accordingly the writ petition is dismissed.

March 2, 2007 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**